

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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LEGEND

Company =

State =

D1 =

D2 =

D3 =

x =

Year 1 =

Dear :

This letter responds to a letter dated September 20, 2011, and subsequent correspondence, submitted on behalf of Company, requesting a ruling under §1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, Company was incorporated under the laws of State on D1 and elected to be an S corporation for federal tax purposes effective D1. Between D2 and D3, x% of Company's stock may have been owned by an ineligible S corporation shareholder and therefore terminated inadvertently Company's S corporation election. Company represents that for all years through Year 1, Company and its eligible shareholders have filed all federal income tax returns

consistent with Company's S corporation election. Company represents that the termination was not motivated by tax avoidance or retroactive tax planning. Company and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of Company as an S corporation.

LAW

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides in part that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in the termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the representations made and the information submitted, we conclude that Company's S corporation election may have terminated because Company may have had an ineligible shareholder. However, we conclude that, if Company's S corporation election was terminated, such a termination was inadvertent within the meaning of § 1362(f). Consequently, we rule that Company will be treated as continuing to be an S corporation from D2 to D3 and thereafter, provided that Company's S corporation election is not otherwise terminated under § 1362(d).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representative.

Sincerely,

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: